

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PENSHURST TRADING INC.,

Plaintiff,

-v-

ZODAX LP,

Defendant.

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
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DATE FILED: 2-11-15

No. 14-cv-2710 (RJS)  
ORDER


RICHARD J. SULLIVAN, District Judge:

The Court is in receipt of a letter from Plaintiff, dated February 9, 2015 (Doc. No. 69), seeking “clarification” of the Court’s February 5, 2015 Order (Doc. No. 68 (the “February 5 Order”)). Specifically, Plaintiff wishes to confirm that dismissal pursuant to the February 5 Order would be “*with prejudice* as to refiling a claim for damages for past infringement, but *without prejudice* to the filing of a new complaint should Defendant resume its infringing activity.” (Doc. No. 69 (emphasis added).) The letter also notes that Plaintiff is “willing to accept dismissal with prejudice” to the extent that its understanding of the February 5 Order is accurate. (*Id.*) The Court sees no need or reason for clarification. The Court did not – and of course *could* not – dismiss Plaintiff’s future claims against Defendant based on hypothetical future conduct. A dismissal with prejudice constitutes “*res judicata* . . . as to all matters [previously] litigated and decided [and] as to all relevant issues which could have been but were not raised and litigated in the suit.” *Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir. 1986). Certainly, it cannot be said that issues relating to Defendant’s *future* conduct were actually decided, or could have been decided, by an order dismissing the amended complaint with prejudice.

Accordingly, because Plaintiff acknowledged that it would accept dismissal pursuant to the February 5 Order assuming that such acceptance would not foreclose its right to file a lawsuit based on future acts of alleged infringement by Defendant, IT IS HEREBY ORDERED THAT this case is dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). The Clerk of the Court is respectfully directed to close this case.

SO ORDERED.

Dated: February 10, 2015  
New York, New York

  
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RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE